

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MICHAEL P. McLEOD,)	
)	DOCKET NO.: PT-1997-101
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 30th day of September, 1998, in the City of Butte, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayer, Michael McLeod, appeared on his own behalf and presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Les Taylor, field supervisor for Region 5, and Clara Winscot, an appraiser with the Butte Silver Bow Appraisal Office, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Lot 24, Block 1, Lakeshore #1 and #3
Development, City of Butte, County of
Silver Bow, State of Montana, and the
Improvements located thereon.

3. For the 1998 tax year, the DOR appraised the subject property at a value of \$34,166 for the land and \$130,634 for the improvements.

4. The taxpayer appealed to the Silver Bow County Tax Appeal Board on December 11, 1997 requesting a reduction in value to \$28,000 for the land and \$117,000 for the improvements, citing the following reason:

I have completed an appraisal, which includes several comparable sales, indicating a value as of 1/1/96 of \$145,000. The condition of the home at the time of value is below average. In addition, I have several superior sales as appraised by Dept. of Revenue that are valued below subject.

5. The county board denied the taxpayer's appeal on February 26, 1998, stating:

The taxpayer conceded the value of the land to be as the Department of Revenue appraised it at. The comparables used by the Dept. of Revenue are more

appropriate and the taxpayer's comparables contained adjustments that may not have been appropriate and thus the Dept.'s evidence is sufficient to sustain its valuation.

6. The taxpayer then appealed that decision to this Board on March 9, 1998, citing the following reason:

In my opinion Dept. of Revenue utilized poor comparable sales. It is also my opinion Dept. of Revenue presented evidence without any factual basis. I would like to present my evidence to an unbiased committee in order to reduce my assessed value.

TAXPAYER'S CONTENTIONS

The taxpayer is contending for a value of \$145,000 on a home purchased in August of 1997. He arrived at his requested value as follows: "I paid \$157,000, less one and one half percent realtor's commission, a nice outdoor 8' by 12' storage unit, relatively new, all window treatments, a riding lawn mower, all items of personal property worth, conservatively, \$8,000." Thus, his requested value was determined by subtracting the realtor's commission and his estimated value of the items of personal property. (The Board notes that this calculation would yield a value of \$149,000, not \$145,000).

Mr. McLeod described the state of disrepair found in the home at the date of purchase: the kitchen flooring and other floor coverings were in need of replacement, as was the garage door, heating system components were corroded, water damage was present in the basement from leaking pipes, approximately half

of the lawn sprinkler system heads were non-functional, and the floor in a second bathroom upstairs contained rot and had to be replaced, along with the bathroom sink and part of the wall. Upon questioning by this Board, he estimated the kitchen flooring cost \$2,500 to replace, the garage door \$1,000, heating system repairs to have been between \$300 and \$500, lawn sprinkling system repairs to have been between \$300 and \$500, and replacement of bathroom flooring at \$2,000.

Mr. McLeod testified he is a real estate appraiser by profession. He performed an analysis of 11 current sales of properties he deemed comparable to the subject. The source of this sales information was the Multiple Listing Service (MLS). He did not arrive at a final value for ad valorem tax purposes through this exercise and thus did not perform an appraisal of his property. (His exercise does not contain a final reconciliation of value. He testified he understood that he could not provide an appraisal on his home in a subjective manner for purposes of an appeal). His stated purpose was for comparison purposes only, but noted that only one sale (number 9) required a gross adjustment of 28.1 percent. The other ten sales fell within an acceptable range of adjustments and the analysis of these eleven sales, according to Mr. McLeod, rendered an estimate of market value of \$145,000.

Mr. McLeod testified that the subject home was appraised

by his lending institution for financing purposes. He did not receive, nor did he request or provide as evidence, a copy of this appraisal. He assumes that the appraisal found a value similar to his purchase price "since I got my financing" (of \$157,000).

Mr. McLeod also performed a cost approach analysis, using mean square foot costs, which assumed a 40 percent allowance for physical depreciation. He assumed an effective age of 20 years and divided that number by a total economic life of 50 years. His value indication using a cost approach was \$140,725 (Taxpayer's Exhibit 1).

Mr. McLeod testified his main contention concerns the date of value for this appraisal cycle (January 1, 1996). The DOR has provided five sales that are too far removed from January 1, 1996 (three of the five sales occurred in January of 1992, October of 1993 and October of 1993; the other two sales occurred in December of 1995) and range from \$100,000 to \$190,000. Mr. McLeod asserted he has provided 11 sales from the same neighborhood which he feels are supportive of his requested value of \$145,000.

DOR'S CONTENTIONS

Ms. Winscot testified that she performed an external review of the property, pursuant to an AB 26 property review request, after having been denied interior access by the

taxpayer. (Mr. McLeod stated that he denied the DOR access upon learning that the DOR appraiser had not personally visited all of the properties selected as comparable to his for appraisal purposes). As a result of that review, she reduced the land value to \$34,166 but made no adjustment to the improvement value. She pointed out that, although the taxpayer argued for an appraised value of \$145,000, the realty transfer certificate (RTC) submitted on the transaction indicated \$157,000 as the sales price. Ms. Winscot testified this sales price was further verified by the seller. According to Ms. Winscot, the seller indicated that no personal property was involved in the sale and none is listed on the RTC. (DOR Exhibit B). In further support of the DOR's effort to refute the existence of personal property in the sales price, Ms. Winscot presented DOR Exhibit E, a copy of a portion of the appraisal of a different property, which included the subject property as a comparable sale. The source of this exhibit was MLS and referenced the subject home with a sales price of \$157,000 and a sales date of July 1997.

Ms. Winscot stated the sales comparison approach was used to value this property. One hundred and sixty six sales in the subject neighborhood were analyzed to produce five sales of properties deemed most comparable to the subject (DOR Exhibit E). The comparable sales prices ranged from \$100,000 to

\$190,000.

A quality grade of 1F5 plus and a CDU (condition, desirability and utility) of excellent has been assigned to the subject property. She stated the home contains 1,846 square feet, one story, a finished basement, two and one half bathrooms, and an attached garage.

Mr. Taylor presented DOR Exhibit F, a copy of a sales verification form completed by Mr. Taylor through consultation with Greg Hoskins, president of Sterling Mortgage and Investments Ltd. Mr. Taylor testified a mortgage deed was on file with the Silver Bow County Clerk and Recorder for the subject property. Mr. Taylor stated the mortgage deed listed Sterling Mortgage and Investments, Ltd. as the financing agent. Mr. Taylor testified Mr. Hoskins, when contacted by telephone, verified that the total purchase price was \$157,000. According to Mr. Taylor, the existence of any personal property in the transaction was unknown to Mr. Hoskins.

Mr. Taylor recounted that Mr. Hoskins' statement was that Sterling Mortgage loaned money under the assumption that only real property was involved and on a purchase price of \$157,000.

Further, Mr. Taylor stated the notion of this personal property being included in the sales price was never mentioned by Mr. McLeod to the Department of Revenue, neither in the AB26 review nor during the course of the hearing before the county

tax appeal board.

BOARD'S DISCUSSION

The Board finds that the taxpayer failed to present sufficient evidence to support his requested value. He did not present substantial and credible evidence in support of the estimated valuation of the personal property, nor in his contention that the items of personal property and the realtor's commission should be deducted from the purchase price in order to arrive at fair market value for ad valorem tax purposes. On that subject, Mr. McLeod testified: " . . . What I'm saying is on that particular buy-sell agreement, I wasn't willing to pay the price but I wanted to make sure that value was up there so I could borrow that much more against the home. And that was one of the ways to do that but yet still get some money back." Mr. McLeod wants a higher market value for finance purposes and a lower market value for ad valorem tax purposes.

The taxpayer filed an AB-26 and the DOR adjusted the value of the land but was denied access to the residence. Mr. McLeod, as a real estate appraiser by profession, should understand the difficulty in appraising a property without having the ability to inspect the entire property.

Mr. McLeod testified to various structural items in need of repair at the time of purchase. These items were in

existence when he paid \$157,000 for the property. Section 15-8-111, MCA, (1), provides:

15-8-111, MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.(2)(a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

The DOR determined a condition, desirability and utility (CDU) for the subject property as excellent. On numerous occasions before this board, the DOR has presented its Book of General Evidence, an explanation and reference manual for the DOR's general appraisal and assessment process. The CDU is defined in the "Book of General Evidence" as: "Condition - Desirability - Usefulness, depreciation from all forces (physical, economic & functional) are combined in CDU". The Montana Appraisal Manual defines a CDU of "Excellent" to indicate perfect condition; very attractive and highly desirable. Based on the testimony of the taxpayer, the CDU of the property better reflects that of a "Good" rating as defined in the Montana Appraisal Manual: "Good" indicates minor deterioration is visible; slightly more attractive and desirable, but useful.

The DOR has employed the sales comparison approach to arrive at market value for ad valorem taxation purposes.

A review of DOR Exhibit E, the Montana Comparables Sales Sheet for the subject property, shows a field control code of 3. The Book of General Evidence indicates, for properties over \$100,000, a field control code of 2 or less is considered reasonable; however, the comparability indexes (a measure of the degree of comparability between the subject and the properties selected as comparable) for each of the subject properties is acceptable (between 100 and 150). The record indicates that the DOR's market approach has rendered a valid indication of market value for the subject property as of the valuation date for the current appraisal cycle: January 1, 1996.

For the foregoing reasons, the DOR will market model the subject property based on a change of the CDU from excellent to good.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **15-2-301, MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and

statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

4. **Western Airlines, Inc. v. Catherine J. Michunovich,**
et al, 149 Mont. 347.428 P.2d 3.(1967).

5. The appeal of the taxpayer is hereby granted in part and denied in part and decision of the Lake County Tax Appeal Board is modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Silver Bow County by the Assessor of that county at the 1997 tax year value of \$34,166 for the land and the improvements based on the sales comparison approach with a CDU of "good." The appeal of the taxpayer is therefore granted in part and denied in part and the decision of the Silver Bow County Tax Appeal Board is modified.

Dated this 24th of December, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

